IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 193 OF 2005

Shri Ramchandra Gangaprasad
Halwai, major in age,
Shop No.5, Mendes Mansion,
Vasco-da-Gama-Goa. ... Applicant

versus

1. Shri Suryanarayan
   Ramadhar Halwai,
   resident of Greater
   Kailas Bldg., 3rd Floor,
   Room No.1, Vasco-da-Gama,
   Goa.

2. Bodairam Gaurishankar
   Halwai, resident of
   Greater Kailas Bldg.,
   3rd Floor, Room No.1,
   Vasco-da-Gama-Goa(expired).

3. Laxmishankar Bipat
   Halwai, resident of
   Greater Kailas Bldg.,
   3rd Floor, Room No.1,
   Vasco-da-Gama-Goa.

4. Gulabi Bodairam Halwai,
   resident of Greater Kailas
   Bldg., 3rd Floor, Room No.1,
   Vasco-da-Gama-Goa.

5. Anaradevi Suryanarayan
Halwai, resident of
Greater Kailas Bldg.,
3rd Floor, Room No.1,
Vasco-da-Gama(expired
after order).

6. Mataprasad Javahir
Halwai, resident of
Greater Kailas Bldg.,
3rd Floor, Room No.1,
Vasco-da-Gama-Goa.

7. Manaradevi Mataprasad
Halwai, resident of
Greater Kailas Bldg.,
3rd Floor, Room No.1,
Vasco-da-Gama-Goa.

8. Munnidevi Halwai,
resident of Greater Kailas
Bldg., 3rd Floor, Room No.1,
Vasco-da-Gama-Goa.

9. Shobadevi Halwai,
resident of Greater Kailas
Bldg., 3rd Floor, Room No.1,
Vasco-da-Gama-Goa.

10. Babulal Halwai, resident of
Greater Kailas Bldg.,
3rd Floor, Room No.1,
Vasco-da-Gama-Goa.

11. Bardiprasad Sitaram Bind,
(EXPIRED), resident of
Sundaribai Chawl, Sasmolem
Baina, Vasco-da-Gama-Goa.
(expired).

12. Rajesh Laxmishankar Halwai resident of Commerce Centre, Vasco-da-Gama-Goa, running business at Khalap Mansion, Banaras Dairy Farm, Vasco-da-Gama-Goa.

13. Kirandevi Rajesh Halwai, resident of Commerce Centre, Vasco-da-Gama-Goa, running business at Khalap Mansion, Banaras Dairy Farm, Vasco-da-Gama-Goa.

14. Ratanlal Puru Halwai, resident of Commerce Centre, Vasco-da-Gama-Goa, running business at Khalap Mansion, Banaras Dairy Farm, Vasco-da-Gama-Goa.

15. Ashokkumar Gangaprasad Halwai, resident of Commerce Centre, Vasco-da-Gama-Goa, running business at Khalap Mansion, Banaras Dairy Farm, Vasco-da-Gama-Goa.

16. Durgaprasad Satyanarayan Halwai alias Durgaprasad Halwai, resident of Greater Kailas Building, 3rd Floor, Room No.1, Vasco-da-Gama, Goa.

17. Ganpatiram Gaurishankar Halwai, near New Vaddem, Water Tank, New Vaddem.

18. Christopher Balaram,
resident of Greater Kailas
Building, 3rd Floor,
Room No.1, Vasco-da-Gama-Goa. ... Respondents

Mr. Rohit Bras De Sa, Advocate for the Applicant.

Mr. U. G. Shetye, Advocate for the Respondent Nos.1, 3, 4, 9, 12, 13, 16 and 18.

Mr. Jayant R. Sattigeri, Advocate for the Respondent Nos.14 and 15.

CORAM : N. A. BRITTO, J.

DATE : 10TH JANUARY, 2006.

ORAL ORDER

The applicant herein is a complainant who is seeking special leave to appeal against the acquittal of accused nos.1, 3 to 9, 12 to 16 and 18 under Sections 143, 148, 352, 506(ii) r/w 149 I.P.C. by Judgment/Order dated 16-7-2005 of the learned Judicial Magistrate, First Class, Vasco-da-Gama. The case against accused no.2 and accused no.11 abated as they expired during the course of the trial while the case against accused nos.10 and 17 was brought to an end by the complainant by filing an application dated 31-7-1997 and obtaining orders thereon dated 3-3-1998 by which the

names of the said accused nos.10 and 17 were deleted, and, this was after the said accused no.10/Babulal Halwai and accused no.17/Ganpatiram Gaurishankar Halwai had filed affidavits stating that they had not participated in the assault.

2. The case of the complainant, in brief, is that on 18-8-1989, the complainant's stall set up during Saptah festival for sale of sweetmeats was being dismantled and when the complainant reached there about 9.45 p.m. and was about to get down from his motorcycle the accused came towards the complainant and accused no.1/Suryanarayan R. Halwai caught hold of the collar of the complainant and started abusing him by giving bad words and threatened to kill him if he did not withdraw the case against accused no.1/Suryanarayan R. Halwai which was being investigated by the Crime Branch. It was also the case of the complainant that all the accused surrounded the complainant with a common intention of assaulting him and setting his stall on fire and the accused were armed with lathis and had come prepared to assault the complainant and set his stall on fire and while A-1/Suryanarayan R. Halwai was holding his collar, the rest of the accused assaulted him and at this time A-3/Laxmishankar B. Halwai removed a revolver and held it against the chest of the complainant and threatened to kill him if he failed to withdraw the said case being investigated by the

Crime Branch and further threatened him that the complainant should not be seen again in Goa and should leave along with his family as otherwise all the accused would kill the complainant and his family members, but the complainant, who was still on his motorcycle managed to start his motorcycle and forced his way from the accused and from there he went to his shop at Mendes Mansion and although some of the accused followed the complainant they did not manage to catch him and thereafter the family members of the complainant who were at the stall were assaulted and threatened and told to convey the threats to the complainant and thereafter immediately the complainant reported the matter to the Police but the Police recorded a N.C. complaint and that too against two of the accused and, therefore, the complainant filed his complaint to the Police Station on 24-8-1989 but since the Police did not take any action nor carried out any investigation, the complainant filed the complaint before the Court on 26-9-1989 i.e. after over a month after the alleged incident.

3. In support of his case, the complainant examined himself and his three sons, namely, PW2/Bharatlal Halwai, PW3/Munnalal Halwai and PW5/Vijay Prakash Halwai. The complainant also examined PW4/Gulabchand Mourya who was earlier removed from service by A-3/Laxmishankar B. Halwai. The complainant examined PW6/Meghnath

Halwai who was complainant's employee and PW7/Rajesh Kumar Singh who is claimed by the complainant to be an independent witness, and who unfortunately as far as the complainant is concerned, was not even sure which of the accused had caught the collar of the complainant and who was also not sure whether the accused present in the Court were the members of the mob of about 10 to 12 men and 5 to 6 ladies, who according to him, had gheraoed the complainant as he was sitting on the motorcycle.

4. There is no dispute that the complainant and all the accused except A-11/Badriprasad S. Bind and accused no.18/Christopher Balaram are closely related to one and another and although A-1/Suryanarayan R. Halwai is the cousin of the complainant(being complainant's father's sister's son) and A-3/Laxmishankar is the brother-in-law of the complainant, the complainant has stated that none of the accused are his close relations. A-12/Rajesh Laxmishankar Halwai is the son of A-3/Laxmishankar, A-14/Ratanlal Puru Halwai and A-15/Ashokkumar are the step brothers of the complainant. A-2/Bodairam G. Halwai and A-17/Ganpatiram G. Halwai are both brothers. A-4/Gulabi B. Halwai is the wife of A-2/Bodairam G. Halwai and A-5/Anaradevi S. Halwai is the wife of A-1/Suryanaranyan R. Halwai. A-7/Manaradevi, A-8/Munnidevi and A-9/Shobadevi are the daughters of A-2/Bodairam G. Halwai. A-16/Durgaprasad S. Halwai is the

son of the brother of A-1/Suryanarayan R. Halwai. It has been stated that the complainant, A-1/Suryanarayan and A-3/Laxmishankar are dealing in sweetmeats and are business rivals and have their shops in close vicinity. At the place where the alleged incident had taken place if complainant had set up a stall to sell sweetmeats on the occasion of Saptah festival, so had A-1/Suryanarayan and A-2/Bodairam set up their respective stalls for the purpose of sale of sweetmeats.

5. Admittedly, the relations between the complainant on one hand and accused no.1/Suryanarayan as well as A-2/Bodairam appeared to have been strained for a number of years. There was an incident on 17-3-1988 alleged by the complainant in which accused nos.1/Suryanarayan and A-3/Laxmishankar accompanied by 9 other persons are alleged to have damaged the shop of the complainant giving rise to filing case No.53/S/89/A. Likewise, there was another case namely 87/76 which apparently was filed against A-3/Laxmishankar in which the complainant is stated to have been acquitted. Similarly, accused no.1/Suryanarayan and accused no.3/Laxmishankar are also stated to have falsely implicated the complainant in a rape case with the female servant working for the complainant in his shop. The complainant has admitted that although A-3/Laxmishankar is his brother-in-law, his sister having got married to him

about 40 years back, he has severed his relationship with him but at the same time the complainant stated that he did not have any enemity with A-3/Laxmishankar and his family members. It also appears that in respect of the incident dated 17-3-1988 the complainant has filed Civil Suits against A-1/Suryanarayan and A-3/Laxmishankar for having caused damage to the complainant in the tune of 8 to 8.5 lakhs in respect of his two shops.

6. Since business rivalry as well as enemity was admitted between the complainant on one hand and accused no.1/Suryanarayan as well as A-3/Laxmishankar on the other hand, the case of the complainant had to be scrutinized closely and that is what exactly has been done by the learned Judicial Magistrate,First Class by his Judgment/Order dated 16-7-2005 and acquitting the accused.

7. Admittedly, soon after the incident the complainant reported the matter to the Police and the Police recorded a N.C. complaint under Sections 504, 352 r/w 34 I.P.C. and that too only against A-1/Suryanarayan and A-2/Bodairam and not against A-3/Laxmishankar who is alleged to have removed a revolver and kept it on the chest of the complainant threatening to kill him. Although, the complainant states in his complaint that he had filed a complaint in writing dated 24-8-1989 because his

complaint was treated as N.C., the complainant did not produce the said complaint in his evidence before the Court during the trial though, the complainant had submitted the same at the time of recording his statement on oath prior to the issue of process. The complainant also did not examine any Police Officer to support the case of the complainant that indeed the said complaint dated 24-8-1989 was received at the Police Station. In the absence of the production of the said complaint dated 24-8-1989 or examining any Police Officer to support the fact that the same was indeed presented at the Police Station, the complainant's story that he had ever filed the said complaint dated 24-8-1989 could not be accepted. The present complaint before the Court, as already stated was filed on 26-9-1989 i.e. after more than a month and the complainant has not given any explanation for the said delay and the said delay obviously would throw a great amount of doubt on the very veracity of the case of the complainant in the light of the fact that initially the complainant's complaint was treated as a N.C. and it was filed only against A-1/Suryanarayan and A-2/Bodairam. Even as regards this N.C. - Exh.PW1/A is concerned, the complainant has stated that the same was not recorded immediately but after he was sent back to the stall to find out about the situation and after he returned back to the Police Station. Although the complainant came before the Court with an allegation that A-1/Suryanarayan caught hold of his collar and abused him and

threatened to kill him and the remaining accused assaulted him and A-3/Laxmishankar held a revolver against his chest and threatened to kill him, the complainant changed his version before the Court in his examination-in-chief and stated that as he was getting down from his motorcycle accused no.1/Suryanarayan along with A-2/Bodairam, A-3/Laxmishankar, A-7/Manaradevi, A-11/Badriprasad, A-12/Rajesh, A-14/Ratanlal, A-15/Ashokkumar, A-16/Durgaprasad and A-18/Christopher caught hold of his collar. Thereafter the complainant abandoned the case of the assault by the remaining accused or they having held his collar and stated that besides catching the collar by A-1/Suryanarayan and pointing out the pistol by A-3/Laxmishankar and giving of abuses no other incident took place against him. The complainant also gave up the case of the accused being armed with lathis and having come to assault him. The complainant categorically stated that no other accused assaulted him and further stated that the contents of para 4 of the complaint to the extent that the rest of the accused had started assaulting him by A-1/Suryanarayan holding his collar was not a correct statement. In other words, we have a complainant here who has been going on changing his versions from time to time and it is this last version of catching hold of his collar by A-1/Suryanarayan and pointing out of the pistol by A-3/Laxmishankar alone which was sought to be proved with the evidence of other witnesses.

8. The complainant did not compound the case against accused nos.10 and 17 but their names from the case came to be deleted by rather curious process. On or about 18-4-1997 or thereabout both the said accused filed affidavits and in the said affidavits A-10/Babulal stated that he was aware of the altercation between the complainant and A-1/Suryanarayan and the complainant was assaulted but he did not participate in the fight. Likewise, accused no.17/Ganpatiram stated that a hot discussion started between the complainant and A-1/Suryanarayan and when A-3/Laxmishankar came to the scene, both assaulted the complainant/Ramchandra G. Halwai when he saw A-3/Laxmishankar took out a revolver and touched to the chest of the complainant. After the said affidavits were filed the complainant in his application dated 31-7-1987 probably accepted as to what the said accused nos.10 and 17 had stated and, therefore, made a prayer therein that the names of A-10/Babulal and A-17/Ganpatiram should be deleted and accordingly accused nos. 10 and 17 were deleted from the case. However, when the complainant was cross-examined on the aspect of deletion, he stated that he accepted the affidavit of accused nos.10 and 17 and at the same time stated that the affidavit of accused no.10/Babulal to the extent that he did not give abuses to him was false and also the contents of the affidavit that A-10/Babulal did not participate in the incident of assault was not correct. Likewise, the

complainant stated he had explained the contents of the affidavit of A-17/Ganpatiram but at the same time stated that the contents that A-17/Ganpatiram came to separate the complainant from A-1/Suryanarayan and A-3/Laxmishankar was false. The complainant further stated that A-17/Ganpatiram made false statements on affidavits that he did not attempt to do anything against him or that he did not commit any offence. In other words, the complainant gave no explanation as to why he got the names of A-10/Babulal and A-17/Ganpatiram deleted from the complaint in case what they had stated in the affidavits was false and in case the said A-10/Babulal and A-17/Ganpatiram had at all abused or assaulted the complainant as to why he had allowed them to go scot-free by deleting their names from the complaint.

9. Although the complainant stated that A-14/Ratanlal had assaulted his son PW3/Munnalal Halwai, this fact was not stated by the complainant in his so-called complaint dated 24-8-1989 nor he averred the said fact in the complaint before the Court apart from making a wild statement that his family members were assaulted without specifying which of the family members were assaulted. The fact that his son PW3/Munnalal was assaulted was also not supported by PW5/Vijay, PW6/Meghnath and PW7/Rajesh and it is surprising that PW5/Vijay who is the very son of the

complainant did not even know accused no.14/Ratanlal who is the step brother of the complainant that the latter had assaulted him.

10. A perusal of the complaint itself particularly paras 2 and 3 shows that the story set up by the complainant is incredible in that it cannot be ascertained whether the so-called assembly was formed to demand that the complainant withdraws the case or whether they had come prepared to set fire to the stall of the complainant. When the complainant was questioned on this last aspect as to why he thought that they had come to set fire to his stall the complainant stated that because the accused had gas and kerosene in their stall! Thereafter, the complainant has given up the case of assault but has restricted only to catching of the collar by A-1/Suryanarayan and pointing out of the pistol by A-3/Laxmishankar. If, A-3/Laxmishankar had at all used his pistol, A-3/Laxmishankar ought to have been the first accused to have been implicated by the complainant in his N.C. complaint, A-3/Laxmishankar being no other than the brother-in-law of the complainant himself and who was his sworn enemy. The case set out by the complainant as well as sought to be proved by him does not inspire confidence. It appears that the complainant chose to file the case against the accused because of the long drawn enemity between the complainant and some of the accused and others who are either the

relations or the employees of A-1/Suryanarayan or A-3/Laxmishankar.

11. The complainant has not been at all consistent in his story which he went on changing from time to time. Complainant's case does not at all appear to be convincing and plausible. The complainant could not have abandoned his entire story and restrict it only against A-1/Suryanarayan and A-3/Laxmishankar and say that this part of the story was corroborated by other witnesses and, therefore, the accused ought to be convicted.

12. In my view, the acquittal of the accused was indeed the only conclusion possible. This is not a fit case to grant leave to appeal. Hence, the application for Special Leave to Appeal is hereby rejected.

N. A. BRITTO, J.

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